

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANNER, SHELTON,
PALMER, and THOMAS, Minors.

UNPUBLISHED
October 22, 2013

No. 315305
Oakland Circuit Court
Family Division
LC No. 10-771726-NA

In the Matter of D. THOMAS, Minor.

No. 315322
Oakland Circuit Court
Family Division
LC No. 10-771726-NA

Before: MURPHY, C.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

In Docket No. 315305, respondent K. Branner appeals as of right from the trial court's order terminating her parental rights to her seven minor children. In Docket No. 315322, respondent D. Thomas, the legal father of the youngest of these children, appeals as of right from the trial court's order terminating his parental rights to the child. The trial court terminated the parental rights of both respondents pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm in both appeals.

I. STANDARD OF REVIEW

Both respondents argue that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence. In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence the existence of at least one statutory ground for termination in MCL 712A.19b(3). MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). The trial court's decision is reviewed for

clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). In this case, the trial court terminated the parental rights of both respondents pursuant to MCL 712A.19b(3)(c)(i) and (g), which permit termination of parental rights under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Both respondents also challenge the trial court's best interests decision. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court's decision regarding a child's best interests is also reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009).

II. DOCKET NO. 315322

The trial court did not clearly err in finding that §§ 19b(3)(c)(i) and (g) were each established by clear and convincing evidence with respect to respondent Branner. The evidence showed that respondent Branner has a long-term substance history involving abuse of alcohol, marijuana, and cocaine. Before this proceeding was initiated, two of her children tested positive for cocaine and marijuana exposure at birth. After the court acquired jurisdiction over the six older children in October 2011, respondent Branner participated in an inpatient substance abuse treatment program, but she did not follow through with the outpatient aftercare treatment component of the program. In December 2011, respondent Branner gave birth to her youngest child, who tested positive for cocaine exposure at birth and exhibited withdrawal symptoms. Respondent Branner subsequently participated in another inpatient treatment program and outpatient aftercare, but she thereafter tested positive for alcohol consumption in both June and July 2012, attended a 48-hour detoxification treatment program (at which she arrived

intoxicated), and then again tested positive for alcohol consumption in October 2012. Respondent Branner had previously pleaded guilty to possession of cocaine in a criminal case and sentenced to probation. As a result of her continued consumption of alcohol, she was sentenced to one year in jail in October 2012 for violating her probation, and she remained incarcerated at the time of the termination hearing. At the termination hearing, respondent Branner denied having an alcohol abuse problem, explaining that she was not an alcoholic because she did not drink every day.

Respondent Branner's substance abuse caused her children to be exposed to criminal activity. Her home was raided by police officers in September 2011 after a controlled purchase of cocaine. At the time, respondent Branner and her children were living with respondent Thomas, who was an absconder from parole and had his own substance abuse problem. During supervised visitation, respondent Branner tried to influence her children to lie to Children's Protective Services investigators if they inquired about alleged physical abuse and domestic violence by respondent Thomas.

Respondent Branner argues that she completed most aspects of her treatment plan, including substance abuse treatment, parenting classes, and therapy. However, "it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part by statute as discussed in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). Here, respondent Branner failed to resolve the most significant factor impacting her parenting, namely, her substance abuse. Despite her participation in substance abuse treatment, she continued to use alcohol, resulting in a one-year jail term for violating her probation. Further, considering respondent Branner's failure to benefit from substance abuse treatment, including two residential treatment programs, aftercare, a detox program, and pre-2011 treatment, and her inability or unwillingness to recognize the magnitude of her alcohol abuse on her ability to provide proper care and custody for the children, the trial court did not clearly err in finding that respondent Branner was not reasonably likely to rectify the conditions that led to the adjudication, and was not reasonably likely to be able to provide proper care and custody, within a reasonable time. Accordingly, the trial court did not clearly err in finding that grounds for termination were established under §§ 19b(3)(c)(i) and (g).

We also reject respondent Branner's argument that termination of her parental rights was not in the children's best interests. The caseworker acknowledged that the children loved respondent Branner and that respondent Branner usually interacted appropriately with them. But more than a year after the children were removed from her care, she remained unable to provide a safe and stable home for them, and her future commitment to sobriety and stability was doubtful in view of her long history of substance abuse, her failed efforts at treatment, and her refusal to fully acknowledge how her continued alcohol abuse disrupted her children's care. All of the children were educationally and developmentally delayed while in respondent Branner's

care, and all had made substantial progress since their removal. Under the circumstances, the trial court did not clearly err in finding that termination of respondent Branner's parental rights was in the children's best interests.

III. DOCKET NO. 315322

The trial court did not clearly err in finding that §§ 19b(3)(c)(i) and (g) were each established by clear and convincing evidence with respect to respondent Thomas. Respondent Thomas had a substantial history of criminal activity and substance abuse. He admitted that his own intoxication during respondent Branner's pregnancy prevented him from realizing that she too was using cocaine. Although he made some progress with his treatment plan following his brief incarceration in the summer of 2012, he thereafter missed some drug screens and submitted one positive screen for alcohol. He also still lacked a stable home and a regular income. Moreover, although he had five other children, he never actively contributed to their care, and he had never cared for the child at issue in this case, who required a heightened level of care due to her medical problems related to her cocaine exposure at birth. His lingering inconsistency with drug screens, his sporadic attendance in therapy, and his dependence on others for housing showed that he had not rectified the conditions that led to the adjudication, and that he remained unable to provide proper care and custody for his child. Considering respondent Thomas' lack of progress, his continued lack of employment and stable housing, and the fact that he had never been a full-time caregiver for any child, let alone a special needs child, the trial court did not clearly err in finding that there was no reasonable likelihood that he would be able to rectify the conditions that led to the adjudication, or be able to provide proper care and custody, within a reasonable time.

Respondent Thomas' reliance on *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), in support of his argument that he was unfairly denied a sufficient opportunity to benefit from services is misplaced. In that case, our Supreme Court reversed an order terminating an incarcerated father's parental rights where he was never afforded an opportunity to meaningfully participate in reunification services over a 16-month period. The Court stated that termination was premature because MCL 712A.19a(6)(c) provides that a court need not order termination if "[t]he state has not provided the child's family, consistent with the time period in the case service plan, with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts are required." The Court held that a trial court "may not terminate parental rights on the basis of 'circumstances and missing information directly attributable to respondent's lack of meaningful prior participation.'" *Id.* at 159–160, quoting *In re Rood*, 483 Mich at 119. Here, respondent Thomas was afforded a meaningful opportunity to participate in reunification services. His incarceration during a brief portion of the proceedings did not significantly interfere with the services that were offered to him, or with his opportunity to benefit from those services. Respondent Thomas' incarceration was not a principal factor in the trial court's decision to terminate his parental rights. Rather, his parental rights were terminated because he failed to sufficiently benefit from the services he received.

Respondent Thomas' reliance on 42 USC 671(a)(15) is also misplaced. That statute sets forth criteria that a state agency must satisfy in order to qualify for federal aid, including the provision of family reunification services unless reunification is contrary to a child's welfare. Subsection (a)(15) provides a framework for states to establish procedures promoting family reunification without compromising children's safety. This statute addresses petitioner's eligibility for aid, but it does not confer any rights on parents in child protection proceedings.

We also reject respondent Thomas' argument that termination of his parental rights was not in his child's best interests. The child was placed in foster care at birth. Respondent Thomas had never been a full-time caregiver for any child, especially one with special medical needs, and his overall lifestyle remained too unstable for a young child. He still did not have a suitable home or consistent employment. Although respondent Thomas asserts that he had five other children who were never placed in foster care, the evidence indicated that he had never been consistently involved in their lives, and he was not actively involved as their caregiver. The trial court did not clearly err in finding that the child's best interests would be served by terminating respondent Thomas' parental rights, thereby affording the child with an opportunity for permanent stable placement with a reliable and consistent parent.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens